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No. 537

In the Supreme Court of the United States

OCTOBER TERM, 1970

ALBERT B. SNYDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a trial in the United States District Court for the Southern District of California, the petitioner was convicted on one count of disobeying a lawful court order directing him to testify pursuant to a grant of immunity (18 U.S.C. 401), and on eight counts of perjury (18 U.S.C. 1621). He was sentenced to concurrent terms of four years' imprisonment on the perjury counts and to a consecutive six-month prison term on the wilful disobedience count. The court of appeals affirmed the convictions on June 11, 1970. On July 13, 1970, an extension of time to file a petition for a writ of certiorari was granted to and including

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August 10, 1970. The petition, which was filed August 13, 1970, is out of time under Rule 22(2).

There is in any event no reason to grant the writ. Petitioner admits that his testimony before a federal grand jury in September, 1967 was false (Pet. 7). He attacks the perjury convictions on grounds that his testimony at a subsequent appearance before a federal grand jury should not have been admitted at trial because it was "coerced" by statements to his attorney by the assistant United States attorney that the government was more interested in truthful testimony from defendant than in a perjury case against him. As the court below observed, however, when petitioner agreed to tell the truth on a second occasion in the hope of escaping punishment caused by his own wrongdoing in falsely testifying in an earlier proceeding, "he was not acting under the kind of coercion that the law condemns" (Pet. App. A–4).

Petitioner also claims that the contempt conviction for refusing to testify after being granted immunity was invalid because he relied "in good faith upon advice of his counsel that he would not be immune from prosecution for perjury committed before the Federal Grand Jury." (Pet. 11). 47 U.S.C. 409(l) provides that no individual shall be prosecuted for any matter "concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment *for perjury committed in so testifying*" (emphasis supplied). The ad-

vice of counsel that petitioner would be subject to punishment if he committed perjury when he testified is hardly a defense to refusal to testify. The conflict petitioner sees among the circuits as to the advice of counsel defense is wholly chimerical. As the court below points out, in the cases relied on by petitioner, the defendant acted in good faith reliance upon counsel's advice that what he did was not a violation of the court's order.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1970.

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